

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities	Date: November 8, 2016
From: Office of Local Systems	I.M. No. 3.114
Subject: Cultural Resource Regulations	

Contents: This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to assist them in complying with the cultural resource regulations. This I.M. also includes the following attachments:

[Attachment A](#) – Cultural Resources Process Flowchart

DEFINITIONS

Archaeological Site: The remains of people's activities. These can be classified as historic or prehistoric. Historic sites would include such things as pioneer farmsteads, cabin sites or sites like the sunken steamboat Bertrand at DeSoto Bend on the Missouri River. Prehistoric sites typically include Native American campsites, villages tool manufacturing locations and burial mound sites.

Historic Property: Historic properties include historic barns, historic districts, archaeological sites and other properties. To be considered as an historical property, houses, barns, or bridges must be at least 50 years old. While unusual, some properties less than 50 years old are classified as historic.

Historic Districts: Historic farmsteads, town squares, commercial districts or neighborhoods, and in some cases, even landscapes. These can sometimes encompass a large area. Historic Districts can include a cluster of archaeological sites.

GENERAL

In Iowa, there are four main sets of regulations governing effects on cultural resources, such as historic properties or archaeological sites by LPA construction projects. Each set of regulations and a summary of their requirements are outlined below.

Iowa Code Section [314.24](#) – Natural and Historic Preservation

1. Construction of streets and highways must, to the extent practicable, preserve and protect natural and historic sites or areas.
2. Destruction of such sites shall be avoided if reasonable alternatives are available at no significantly greater cost.
3. The LPA must make a diligent effort to identify and examine the comparative costs for alternatives.

Iowa Code Sections [263B.7-9](#), [523I.316\(6\)](#) and [716.5](#) and [Iowa Administrative Code 685-11.1](#) - Requirements governing cemeteries and burials

1. All human burials are protected from unauthorized disturbance, whether by public or private actions.
2. Prehistoric (over 150 years old) burials are under the authority of the Office of State Archaeologist (OSA).
3. If a burial site is identified before construction, the site should be avoided if possible.
4. If a burial site is discovered during construction, the LPA shall notify the proper authorities. If the burial is modern (not considered prehistoric), the LPA shall contact the local sheriff.
5. If the burial is not modern, there is now a division of responsibilities under Iowa law and Federal law for contacts involving burials. Contact the Iowa DOT Office of Location & Environment (OLE), [Cultural Resources Manager](#), should be the initial contact for liaison with the OSA and the Iowa Indian Advisory Committee. The OSA can help identify the age and culture of human remains. The Cultural Resources (CR) section of OLE needs to be involved for Section 106 and FHWA responsibilities.

Section 4(f) of the United States DOT Act of 1966

1. Besides publicly owned parks, recreational lands, greenbelts or wildlife refuges, these regulations also apply to historic properties. These properties are known as 4(f) properties.

2. 4(f) is one of the highest levels of protection offered to properties by Department of Transportation agencies; these properties should only be impacted when all other prudent and feasible options have been exhausted.
3. Archaeological sites in Iowa are sometimes exempted from these requirements.

Section 106 of the National Historic Preservation Act of 1966

Key Players

1. *Federal Agencies.* Federal agencies usually involved with implementing the Section 106 requirements include: the Federal Highway Administration (FHWA), the United States Army Corps of Engineers (Corps) and the Federal Emergency Management Agency (FEMA). Final authority and responsibility for carrying out the provisions of this act rests with the various federal agencies involved. However, the federal agencies may choose to delegate these responsibilities. OLE is officially delegated to carry out most Section 106 responsibilities for FHWA funded actions in Iowa including consultation with Native American Tribes and Nations. OLE will prepare project information, maps, correspondence, and other documentation for use in Tribal contacts. The FHWA will become actively involved in Tribal consultation when a project will have an adverse affect to a historic property of Tribal interest or by specific request of a consulting party.
2. *State Historic Preservation Officer (SHPO).* This position is appointed by the governor and is required by the National Historic Preservation Act of 1966, as amended. This position and the accompanying State Historic Preservation Office is funded by a combination of state and National Park Service funds. SHPO is acting for the Advisory Council on Historic Preservation and must be given an opportunity to review and comment on all federal actions in the state which have potential to affect historic properties.
3. *Advisory Council on Historic Preservation (ACHP).* This group consists of 24 members (plus a staff of archaeologists and historians) from federal, state and local governments as well as the private sector and educational institutions. ACHP has final review and comment authority on all federal actions with potential to affect historic properties. However, the ACHP rarely becomes directly involved in consultation for individual projects unless there is a failure in the consultation process at the state level.

Federal agencies, including FHWA, are required by law to consider SHPO and ACHP comments, and these comments are taken very seriously. In certain cases, ACHP comments may have to be addressed by the Washington D.C. office of FHWA. Also, individuals with an interest in historic preservation may go to court to stop or alter a roadway project that affects historic properties.

4. *Native American Tribes and Nations:* Many Native American Tribes and Nations once called Iowa home. Today the Federal Highway Administration and the Iowa DOT consult with over 30 of these Tribes and Nations under the National Historic Preservation Act. These Sovereign Nations have either a historical, ancestral or ceded land connection to Iowa. There are elements of treaty laws that only apply to these Sovereign Nations that are different from state and federal law.
5. *Interested Parties:* The National Historic Preservation Act requires consultation with interested parties and the public; these may include local historical societies, historic preservation commissions, certified local governments, land holders and other preservation groups.

PROCEDURES

1. *Establish the Area of Potential Effect (APE).*

Some projects have little or no potential effect on historic properties. The Statewide Agreement is between SHPO, FHWA, and the Iowa DOT; and allows DOT, Office of Location and Environment, on behalf of FHWA to authorize projects that have no potential to cause an effect on historic properties without any SHPO involvement. Projects that fall into such a category typically do not have a construction component.

The Area of Potential Effect (APE) always includes the footprint of the project but can also include things like viewsheds and audio disturbances. FHWA and Iowa DOT also consider vibration effects and have protocols in place for projects that may produce vibration levels that can damage historic properties.

2. *Complete the Concept Statement.*

If the LPA is unsure of the resources in the area, check with the University of Iowa – Office of the State Archaeologist site – I-Sites public website <http://archaeology.uiowa.edu/i-sites>. This resource allows an LPA to assess any recorded historic structures or buildings in your project area, as well as the number of archaeology sites recorded in the section(s) that the project is located in. Be sure to include maps of the project. At a minimum two are recommended, one at the county level to see the approximate location and a second, more detailed map that shows easements (permanent or temporary). Preliminary plans generally work well.

3. *Review of Project by Cultural Resources Staff at OLE and Early Consultation.*

Once the concept statement is approved by the Administering Office, it will be submitted to OLE for National Environmental Policy Act (NEPA) and National Historic Preservation Act (Section 106/SHPO) review. Once the cultural resources staff reviews the concept statement, one of three scenarios will be completed. The first is that the project will meet exclusions to the Statewide Agreement between Iowa SHPO, FHWA and Iowa DOT. If this is the case the cultural resources manager will issue a cultural resources clearance email memo. These projects often lack new easement (permanent or temporary) or are located in places where complete disturbance can be documented.

NOTE: agricultural disturbance does not constitute complete disturbance.

The second scenario is that the project will not meet exclusion, and need consultation with SHPO. Often times these are projects that might involve activities with low potential to affect historic properties, but historic properties are near and consultation must occur.

The third scenario occurs when an exclusion to the Statewide Agreement between Iowa SHPO, FHWA and Iowa DOT is not met and further investigation is needed. OLE cultural resources managers will make specific recommendations to the LPA which will lead to predictable project delivery. Those recommendations include the completion of a cultural resources evaluation, for which OLE has a contract with the Office of the State Archaeologist to provide this service. However, other archaeology firms are qualified to conduct the same type of assessment; the decision is left to the LPA on who they use. The archaeologist will provide the LPA a report of their findings, either recommending a survey or “no survey recommended.” If no survey is recommended, OLE will use this letter assessment to document to SHPO that no historic properties will be affected. Many of these projects often fall into the [Minor Projects](#) (Appendix C) part of the Statewide Agreement between SHPO, FHWA and Iowa DOT. If a survey is recommended, contact an archaeologist to complete the survey.

Sometimes the cultural resources evaluation is not needed and OLE will provide a recommendation for an investigation directly to the LPA. This saves the LPA the time and effort of an evaluation when it will clearly not be sufficient. If there are questions about this recommendation or why it is needed the LPA should contact the appropriate cultural resources manager in OLE.

The public involvement for a project as described above with little or no potential to cause an effect to historic properties would be minimal and limited to normal public notices of proposed LPA federal-aid projects. For projects that do have a potential effect on historic properties, see the next step.

4. *The LPA/consultant Completes an Identification Survey and Report.*

An identification survey and report identifies any historic properties or archaeological sites which could be impacted by the project. This report must be submitted by the LPA or consultant, to the appropriate cultural resource manager in OLE, and make sure to include the Administering Office. The report will specify if the resources identified are eligible, potentially eligible or not eligible for listing in the National Register of Historic Places. The findings should connect each resource identified to a specific National Register Criteria (A-D).

Phase I archaeology involves research of historical records, previous survey results, collection of field data including shovel tests and post holes in areas of poor visibility. Various geomorphology considerations are also taken into account. Field work for Phase I archaeology usually cannot be done

during the winter months, so LPAs are encouraged to plan their work according to the field season (lack of frost and snow).

Reconnaissance level historic studies include a site visit for purposes of an architectural evaluation, data collection, archives research and taking photos. These studies are preliminary in nature and may or may not include National Register eligibility determinations. If further work is needed, it will lead to an intensive historical/architectural evaluation.

The Association of Iowa Archaeologists maintains a list of archaeological consultants and Preservation Iowa maintains a list of historical consultants who meet the minimum standards set by the Secretary of the Interior for this type of work. However, this is not a guarantee that the consultant's work will be adequate. Archaeologists shall follow the [Guidelines for Archaeological Investigations in Iowa](#) to make sure that they have checked and documented all potential archaeological information for SHPO's review. Historians shall use the Iowa Site Inventory Forms for recording structures over 50 years old. If the LPA has questions about the study or other parts of the process direct communication with the cultural resources manager in OLE is recommended.

Before conducting a Phase I survey, it is important to identify the limits of the project; this is one of the most critical steps for the LPA. Preliminary plans that show the limits of the proposed improvements and the right-of-way are desirable, but in some cases (such as bridge replacement projects), a survey can be conducted without preliminary plans. It is recommended to always survey an area slightly larger than is needed to accommodate design modifications.

5. *OLE sends identification report to SHPO, Native American Tribes/Nations, and Interested Parties for review and comment - Consultation.*

SHPO will review reports within 30 days of receipt or request additional time from OLE. Iowa SHPO has limited staff; therefore, OLE assists SHPO by reviewing and summarizing the findings from the report. If the report is adequate, SHPO usually concurs with the findings of the report and OLE's determination. They will sign the concurrence letter and return it to OLE. If the report did not identify any sites or properties that will be affected by the project, the Section 106 process is usually complete. One of the most important parts of this process is that OLE makes a determination of effect for the project. There are four determinations available, it's up to OLE and FHWA to apply the correct determination. They are:

- No Potential to Cause Effect
- No Historic Properties Affected
- No Adverse Effect (sometimes these come with conditions)
- Adverse Effect

The public involvement for projects with no historic properties affected would note the hiring of an archaeologist or historian to review the project in the published agenda of the Board meeting and the published minutes of the meeting. Instruct the archaeologist to include his/her public contacts in the report. Include the results of the cultural resource survey in the minutes of the Board meeting when it is presented to the Board. If the report did identify sites or properties with potential significance, continue to the next step.

6. *The LPA/consultant Completes a National Register Evaluation and Report.*

If a significant historic property or potentially significant historic property is identified, further evaluation may be needed if the property cannot be avoided by the project. Before beginning the Phase II investigation, the LPA shall study alternatives that would avoid impacts to the site or property. Phase II archaeology may require another season for fieldwork. Excavation of the site consists of a larger sample of the archaeology; therefore larger test units and additional lab analysis are required. LPAs can expect additional costs for increased field work, specialized analyses like radio carbon dating, as well as artifact analysis and report writing.

A Phase II historical/architectural (intensive level) investigation is the evaluation stage, which involves more research of historical records. Some historic structures may be sufficiently investigated at the phase I (reconnaissance) level to determine their eligibility for the National Register. Sometimes additional research, such as a Phase II study, is needed to determine eligibility for the National Register.

The LPA may consider directing the historian to complete the identification and determination of eligibility phases at the same time.

The Phase II investigation and report must be submitted by the LPA/consultant to the cultural resources manager of OLE. At this step additional direct communication with the cultural resources manager is highly recommended, this can help address the project timeline and facilitate the discussion or avoidance alternatives.

7. *OLE forwards the Phase II report to SHPO, Native American Tribes/Nations, and Interested Parties for Review and Comment - Consultation.*

SHPO reviews the report and responds to the OLE's determination of effect. If the Phase II report finds that the site or property is not eligible for the National Register of Historic Places (NRHP), and SHPO concurs with this determination, the Section 106 process is complete. Native American Tribes/Nations and Interested Parties can use this time to share comments about the property or the project with the DOT, FHWA and the LPA.

If the site or property is eligible for the NRHP, continue to the next step.

8. *Consideration of alternatives to avoid or minimize impacts by LPA and Mitigation of Effects to Historical Property.*

At this step, all options that avoid impacts need to be considered or reconsidered, which do include the no build alternative. If adverse impacts are not avoidable, mitigation of adverse effects will require that the LPA sign a Memorandum of Agreement (MOA) along with the FHWA, SHPO, and Iowa DOT. The MOA process is substantial and LPAs should expect a minimum of 18 months to complete.

For all adverse effects, whether to archaeology sites or historic structures, consultation with SHPO and all consulting parties is required. A notice must be sent to the ACHP along with specified documentation and a summary of actions. The ACHP must be offered an opportunity to participate in consultation. Consultation often includes the interested Tribes/Nations, the property owner and interested members of the public. The LPA or consultant shall work with the OLE cultural resources manager to complete this process. Several things should be considered by the LPA/consultant:

- An archaeological site may be significant only for the information that it contains. In this case, avoidance is not mandatory, but data recovery is usually required. This will typically require an additional season for fieldwork and often is expensive. Additionally, mitigation that is designed to benefit the public will likely be required. Check with OLE cultural resource managers for examples.
- ACHP requires adequate public involvement. If the site is prehistoric, Tribes/Nations will need to be consulted. OLE staff will lead this effort, but the LPA shall support as needed and does add time to the process. Keep in mind that sites of Tribal interest are confidential, especially burials and sacred sites. For historic sites, archaeology and structures, the LPA should work with local historical societies or historic preservation commissions to gain their input. Any cultural resource discussions at the Board meeting should be documented in the minutes. If there is controversy due to the cultural resources, document the concern and resolution.
- Under the Section 4(f) requirements, 4(f) properties must be avoided if feasible and prudent. It is important to note that cost is not a consideration in this determination. Draft and final 4(f) documentation of alternative and minimization considerations are required.
- For all adverse effects to historic structures or sites, if avoidance is not possible, an MOA will be required. The MOA stipulates measures that will be employed to minimize or mitigate impacts to the historic property. The MOA must be signed by the SHPO, the FHWA, the Iowa DOT, and the LPA. Other interested parties such as interested Tribes/Nations or local historical societies will be given an opportunity to sign. The signed MOA is then sent to ACHP for their files.
- For archaeological sites that are to be mitigated by data recovery, it is necessary that the archaeological consultant write a Research Design / Data Recovery Plan. This needs to be reviewed by OLE and then by SHPO, attached to the MOA, and can be used for requesting Phase III proposals.

- Before a project can proceed to letting, the MOA must be completed and approved by all the reviewing agencies. In addition, the stipulations contained in the MOA must be completed to SHPO's satisfaction prior to letting (SHPO approval of the mitigation field work will usually allow a project to proceed).

For more information on the Section 106 process, refer to *Cultural Resources Process Flowchart*. Section 106 was built around the concept of consultation, therefore it's important to communicate plans and seek input to ensure smooth project delivery. If you have questions about the Section 106 process contact the cultural resources manager in OLE for your district.

For a flowchart on the Cultural Resource process, refer to [Attachment A](#) to this I.M.

For Office of Location & Environment, Cultural Resource contacts, utilize the following website:
<http://www.iowadot.gov/ole/culturalresources.html>